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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 705

WILLIAM C. RAMSEY AND CHARLES E. STENICKA, JR., TRUSTEES OF STERLING MANUFACTURING COMPANY, DEBTOR, UNDER CHAPTER X OF THE BANKRUPTCY ACT,
Petitioners,

vs.

THE UNITED STATES,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Your Petitioners, William C. Ramsey and Charles E. Stenicka, Jr., Trustees of Sterling Manufacturing Company, Debtor, under Chapter X of the Bankruptcy Act, called hereinafter the "Corporation", pray that Writ of Certiorari issue to review the judgment of the Court of Claims dismissing the above entitled cause entered February 26, 1952. (See Record pp. 24 and 69.) The opinion of the Court of Claims on the original petition as amended by the addition of parts of the Contract, appears in the Record at pp. 15 to 24. This opinion is found in 121 CCR but has no bearing on the Substituted and Amended Petition filed and is not referred to herein further. The decision of the Court of Claims refusing to allow the Peti-

tioners to file an Amended and Substituted Petition (R. pp. 26 to 69), appears in the Record, p. 69. It had no opinion.

Jurisdiction

The jurisdiction of the Court rests upon 28 USC 1255. Since this Act makes no provision as to the time for filing the Petition for Certiorari, the general provisions of 28 USC 350 (1946 ed.) would appear to be applicable.

Questions Presented

1. Whether the breaches of the contracts were the failure of the Contract Officer under the contracts to act independent of orders from other officers of the Army, using his own judgment in the manner prescribed by the contracts; otherwise was he named in the contracts as an arbitrater.

2. Whether the amount claimed as damages by the Petitioners are the natural and proximate results of the Respondent's said breaches of said contracts and whether the Respondent had knowledge of facts which indicated that the Respondent knew that said damages might occur.

3. Whether the Petitioners are entitled to receive all damages which are the natural and proximate result of the Respondent's breach of its contracts which might properly have been anticipated by the Respondent and are not directly prohibited by statute.

4. Whether the failure of the United States to pay the Contractor the money which the Corporation had earned, within a reasonable time after the delivery of the caskets, was directly caused by the failure of the Contract Officer to promptly and properly arbitrate the amounts due so that the Corporation was compelled to exhaust its capital funds with which it conducted its then going other business and thereby lost $301,690.91, the reasonably sure profits which it had theretofore thereby earned, and whether such loss

of profits constituted damages which were directly the result of said Contract Officer's breaches of said contracts and which possible damage the Respondent had knowledge would result from said breaches of contracts.

5. Whether the failue of the Contract Officer to promptly and properly arbitrate the amounts due the Corporation for its manufacture and delivery of the 4,000 caskets and cases and thereby deprived the Corporation of its money with which it would have continued its refrigeration development, resulted in damages to said Corporation which were a direct and proximate result of said breaches of said contracts and of which possible damages the Respondent had knowledge.

6. Whether the failure of the Contract Officer to reasonably and properly find that certain equipment purchased by the debtor corporation during the performance of the two contracts belonged to the United States, the cost of which should be allowed to the Corporation as a part of the costs of the performance of said contracts and thereby compelled the Corporation to provide for the care, storage and removal of said machinery and equipment at a cost to itself of $8,636.55, was a damage to the Corporation in the amount of said costs caused by such breaches of said contracts which damages the Respondent had knowledge might reasonably occur.

7. Whether the failure of the Contract Officer to promptly and properly determine the amounts due the Corporation for the manufacture and delivery of said 4,000 caskets and cases naturally resulted in the fact that the Corporation could not pay charges of the Electric Power Company necessary to continue the activation of substantial portions of its machinery so that the Corporation was compelled at a later date to pay the sum of $2500.00 to reactivate said machines was a damage to the Corporation of such an amount, for which the Respondent was

liable and of which possible damage the Respondent had knowledge.

8. Since the Corporation pleaded in Section 9 of its Substituted and Amended Petition that by said breaches of the contracts the officers of the Government knew "they would force the Sterling Manufacturing Company to file in the Bankruptcy Court under Chapter X or otherwise, and said Company would incur the expenses naturally incident to such a procedure", whether such costs incurred by the Corporation through such a procedure were damages properly charged against the United States.

9. Since the failure of the Contract Officer to promptly and properly determine the amounts due the Corporation under the terms of said contracts compelled the Corporation to expend $48,156.24 in order to obtain from the Army Board of Contract Appeals a proper finding, whether such amount was a damage to the Corporation caused directly by said breaches of said contracts of which possible damage the Respondent had knowledge.

10. Whether the Court of Claims was prohibited by Title 28, Section 2516, as amended June 25, 1948, from allowing as damages interest which the Corporation was compelled to pay to persons other than the United States because of the Contract Officer's failure to promptly and properly determine the amounts due the Corporation under said contracts of which damages the Respondent had knowledge.

Statute Involved

Title 28, Section 2516 (a), passed June 25, 1948, c. 646, being 62 Stat. 978, reads as follows:

> "(a). Interest on a claim against the United States shall be allowed in a judgment of the Court of Claims only under a contract or Act of Congress expressly providing for payment thereof."

Statement

In general, the Petitioners claim that the breaches complained of were the failure of the Contract Officer to determine the fair costs of the caskets and cases delivered to the Government in the manner required by the contracts and his arbitrary action in determining said costs, which was not done in accordance with the terms of said contracts and was done under orders of his superior officers which were arbitrary in that they did not follow the terms of the contracts in making such determinations, and that the failure of the Government to make the full payment due for the manufacture and delivery of said caskets by January 2, 1948, was caused entirely by said breaches which thereby proximately caused the special damages complained of.

The Contracts

On April 8th the Corporation entered into a contract with the Quartermaster Corps for the delivery of 2,000 metal burial caskets, with shipping cases, and on May 18th entered into a second contract to manufacture and deliver the same number of caskets and cases (R. pp. 26 and 27). Both contracts specified $121.95 as the unit price (R. pp. 38-39 and 69), and as pleaded in Paragraph 5 of the Substituted and Amended Petition (R. pp. 27 and 28):

> "Each of said contracts contains a price re determination clause known as Form II-B Article (PR 373.6). Under said clauses it was the obligation of the Contract Officer at the Quartermaster Depot at Jeffersonville, Indiana, to determine the final price which should be paid for said caskets and if said Sterling Manufacturing Company did not accept the Contract Officer's finding of price, said Sterling Manufacturing Company had the right of appeal the Contract Officer's finding to the Army Board of Contract Ap-

peals (R. p. 48). The Contract Officer in making his findings was required to show reasonable and legal interpretations of the facts of said contracts and to make fair and equitable findings and give fair and equitable determinations in the matter." (R. pp. (5) 27 also (d) 66).

The Breaches of the Contracts

In Paragraph 6 of Plaintiff's Amended and Substituted Petition it is alleged that:

> "Contrary to and in violation of said terms and conditions of said contract, the Contract Officer did not in fact use his own judgment in making the findings of the fair and equitable price of said caskets, but submitted to the arbitrary decision and direction of his superior officers and followed their determination and did not make his own determination of said price in the manner required by said contracts; and in an arbitrary fashion, contrary to his own determination and to the requirements of the contracts and circumstances attending their performance, the Contract Officer made his findings under the direction of superior officers who had no authority to give orders or to determine said finding, and followed the determination of said superior officers in making his findings which were entirely arbitrary and were not correct, and not fair and just, and in accordance with his own determination of said matters following the requirements of the price redetermination clauses of the contracts above referred to; * * * but officers who were superior in rank to the Contract Officer persisted in ordering the Contract Officer to make such erroneous findings and the findings of the Contract Officer were not in fact his own fair and reasonable determination of the price which should be paid by the United States for said contracts, and the Sterling Manufacturing Company was therefore compelled to prosecute said appeal to its final conclusion." (R. pp. 28 and 29).

The Petitioners further say that:

> "The arbitrary decision of the officers of the United States Army other than the Contract Officer and the orbitrary decision and acts of the Contract Officer in this petition referred to, were arbitrary in that they did not take into consideration all of the fair and proper costs involved and incurred by the Sterling Manufacturing Company in the manufacture of said 4,000 caskets, and took no consideration whatsoever of all of the charges incurred properly by the Sterling Manufacturing Company in the manufacture of said caskets. And said acts were also arbitrary in that the officers of the United States Army who were superior to the Contract Officer and who ordered him as to the amount which he should find as the final cost of manufacturing said caskets and the act of the Contract Officer in making his findings, did not take into consideration the reasonable and legal interpretation of the facts with regard to the performance of said contracts and were not fair and equitable determinations of said matters, all of which findings said officers superior to the Contract Officer and said Contract Officer knew, or had good reason to know, were not legal and reasonable or fair and equitable interpretations of the facts regarding the performance of said contracts as required by the terms and conditions of said contracts" (R. p. 29).

Respondent's Knowledge

In Paragraph 8 of the Substituted and Amended Petition (R. pp. 29 and 30) it is pleaded that:

> "During the time that the United States was negotiating with the Sterling Manufacturing Company for the execution of said contracts, the United States sent officers of the Army to Omaha, Nebraska, who examined the resources and liabilities of said corporation, including its buildings, machinery, inventories, and all matters relating to said assets and liabilities.

Said officers were fully informed of the nature of the business at that time being conducted by the Sterling Manufacturing Company and the profits which said Company was receiving from the conduct of its said business, and was also fully advised and had knowledge of the work of said Company in promoting a new type of business known as truck refrigeration business, and of the cost which the Company had incurred and was incurring in promoting said new line of business, and said officers of the United States were fully advised of the need that said Company had for the investment of its operating capital in the business it was then conducting and the truck refrigeration business which it was preparing itself to conduct, and said officers were also fully advised that the Company would be required to make substantial bank loans from the First National Bank of Omaha, Nebraska, in order to enable it to have the funds necessary to complete said contracts in the manner provided for by the price redetermination clauses. And the said officers had full knowledge that if the Sterling Manufacturing Company was not paid the fair and reasonable cost of manufacturing said 4,000 caskets in accordance with specifications and in accordance with a proper determination by the Contract Officer of the fair price to be paid therefor, as provided for in the price redetermination clauses of said contracts, the Sterling Manufacturing Company would be required to use the working capital which it found necessary and which was employed in the conduct of its other business for the manufacture of said caskets, and would be compelled by reason thereof to close down the conduct of its profitable business then being conducted and to cease its conduct of its truck refrigeration business which it was developing as aforesaid, and would thereby be deprived of its usual profits from said business and of the fair and reasonable value of its promotional expenses in the preparation of the truck refrigeration business as aforesaid."

Paragraph 9 of said Substituted and Amended Petition (R. p. 30) alleged that the Sterling Manufacturing Company during the time it was challenging the right of officers superior to the Contract Officer to give him directions as to the amount which he should fix in his findings for the fair and reasonable cost of said caskets, the said officers knew and were advised that if said officers compelled the Contract Officer to make arbitrary and erroneous findings which they ordered, they would force the Corporation to file in the Bankruptcy Court under Chapter X or otherwise, and said Corporation would incur the expenses naturally incident to such procedure.

Paragraph 10 of the Substituted and Amended Petition (R. p. 31) stated that one of the conditions of said contracts provided that the United States should consider as a part of the fair and reasonable cost of manufacturing the caskets, the acquisition by the Sterling Manufacturing Company of numerous items of machinery and fixtures incident thereto, which were not necessary for the Corporation to own and operate in the conduct of the business in which it was engaged and which it was then preparing to engage in, and the Contract Officer at first indicated such items should be included in the cost of said caskets and when the caskets were paid for should belong to the United States but the superior officers of the Contract Officer wrongfully ordered the Contract Officer to make findings of prices for said caskets which were arbitrary, unreasonable and not in accordance with the terms of said contract, and knew that if said items of machinery and fixtures were not allowed as a fair and reasonable expense for the production of said caskets and not accepted as the property of the Government, the Sterling Manufacturing Company would be compelled to provide for the care and storage of said property until the same was paid for

and would require the Sterling Manufacturing Company to improperly pay such expense.

Paragraph 11 of the Substituted and Amended Petition (R. pp. 31 and 32) says:

> "The said officers of the United States Army also knew or had good reason to know, that if the Sterling Manufacturing Company was deprived of its working capital so that it could not operate and maintain its customary business, said Company would be compelled to deactivate some of its machinery and would be required to pay a substantial sum of money should it resume its regular business and be compelled to cause said machinery to be reactivated."

Paragraphs 12, 13 and 14 of the Substituted and Amended Petition (R. pp. 32 and 33) say that by reasons of the facts set forth in Paragraphs 8 to 11 inclusive, the officers of the United States well knew, or had good reason to know that the breaches of the contracts pleaded (a) would cause the plaintiff company to be damaged by the payment of the costs of the Chapter X bankruptcy proceedings; (b) the payment of the expenses which the Corporation would incur in caring for Government material; (c) the cost of reactivating machinery; (d) the loss of the profits from the business which the Company was then conducting; (e) the loss of the moneys which the Corporation had and would invest in the truck refrigeration business; (f) the cost of conducting the appeal made necessary by the breaches of the contracts; (g) the interest which the Company would be required to pay the First National Bank on the money it was required to borrow to complete said contracts from the time that the claims should have been collected until the time they were collected.

Collection of Balance of Contract

Paragraph 15 pleads that the Armed Services Board of Contract Appeals, before whom the cause was tried, al-

lowed $565,655.31 additional to the defendant company which was not paid until the dates set out in Paragraph 16 (R. p. 33).

Damages Resulting from Breaches of Contracts

In Paragraph 17* of the Substituted and Amended Petition (R. pp. 33 to 36) the Petitioners claim the following damages resulting from breaches of said contracts: (a) The Corporation's loss of profits in the sum of $301,690.91 from the operation of the business of its plant which it would have been able to produce from the time it should have been paid until the time it was paid; (b) the loss of the money the Corporation had invested in the refrigeration development business in the sum of $103,654.60; (c) the costs the Corporation was compelled to pay, $8,636.55, on account of the care, storage and removal of the machinery and equipment which belonged to the Government; (d) the money the Corporation was compelled to pay, $2,500.00, for the reactivation of its machinery; (e) the expense of the Chapter X proceedings under the Bankruptcy Act, $34,818.56; (f) the expense which the Corporation was required to pay, $48,156.24, in appealing the decision of the Contract Officer; (g) interest which the Corporation was required to pay on its Bank loan, $22,106.20, from the time the amount should have been paid until the amount was paid; all of said damages "being the direct results of the breach of the contracts hereinbefore set forth and all foreseeable by the officers of the United States Army as hereinbefore set forth."

Total Damages

The Petitioners set forth each of these items as separate damages and aver that the total was $521,563.06, no part of which has been paid, Petition paragraph 18 (R. pp. 36 and 37).

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* Note: See note at end of brief.

Prayer of Petition

The petition asks for judgment against the Respondent in the sum of $521,563.06, with costs of suit and interest from the date of judgment until paid (R. p. 37).

Reasons for Granting the Writ

The Respondent had knowledge of possible special damages.

> "In *Hadley* v. *Baxendale,* 9 Exch. 345, decided in 1854, ever since considered a leading case on both sides of the Atlantic, and approved and followed by this court in *Western U. Teleg. Co.* v. *Hall,* 124 U.S. 444 (31:479), and in *Howard* v. *Stillwell & B. Mfg. Co.,* 139 U.S. 199, 206, 207 (35:147, 150). Baron Alderson laid down, as the principles by which the jury ought to be guided in estimating the damages, arising out of any breach of contract, the following: ' * * * Now, if the special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants, and thus known to both parties, the damages resulting from the breach of such a contract, which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from a breach of contract under these special circumstances so known and communicated.' * * * 9 Exch. 354, 355."
>
> *Primrose* v. *Western Union Telegraph Co.,* (See S.C. Reporter's ed. 1-34), 154 U.S. 1, 38 L. Ed. 883, 894-895.

The Petitioners in this case pleaded that before the Corporation entered into the contracts in question, the United States Army sent its officers to the Corporation's plant and examined and knew all the assets and liabilities of the Corporation and knew the profits that the Corporation was making from its said business and the amount said Corporation was expending or would reasonably expend in the promotion of its truck refrigeration business,

and said officers knew or had good reason to know that the Corporation neded all of its capital assets to engage in its said business and if deprived thereof by the breaches of contracts by the Government, complained of, would be unable to conduct its said business and its said truck refrigeration business which it was developing, and would lose the profits from said business and the amount which it had expended in the promotion of its truck refrigeration business.

The Petitioners also pleaded that said officers knew, or had good reason to know from said examination of the assets and liabilities of the Corporation, that the Corporation would be compelled to go into Bankruptcy Court under Chapter X or otherwise, and would incur the expenses naturally incident to such procedure in the event the Contract Officer made arbitrary and erroneous findings.

The Petitioners also pleaded that if the Corporation was not allowed the cost of the machinery and fixtures which belonged to the Government it would be compelled to provide for the care and storage of said machinery and equipment until the same were paid for by the government, and would be damaged thereby.

The Petitioners also pleaded that if the Corporation were deprived of its working capital so that it could not operate or maintain its customary business by the breaches of the contracts complained of, the Corporation would be compelled to deactivate some of its machinery and required to pay a substantial sum of money to resume its regular business and cause said machinery to be reactivated.

The Petitioners also pleaded that the Corporation would be compelled to pay the cost of conducting an appeal if it was made necessary by the breaches pleaded of said contracts and Petitioners also pleaded that such breaches would cause the Corporation to pay interest to the First National Bank on the money which it was required to borrow there-

from to complete its contracts, from the time the claim should have been collected until the time it was collected.

It is clear, therefore, that the Petitioners pleaded that Respondent had knowledge of sufficient facts to give it notice that such damages would occur if the Respondent should violate its contracts as pleaded and said contracts and said damages were the proximate result of the inability of the Corporation to meet its demands because of the failure of the Government to fulfill its contracts as required. Under such circumstances, the Corporation was entitled to all such damages as would so proximately flow from the breaches of said contracts complained of.

The pleadings are adequate regarding the special damages suggested.

> "While it is true that special damages must be specially pleaded, yet, where special damages are sought to be recovered in actions for breach of contract, the allegations with respect thereto are sufficient if thereby such damages are specially claimed, if the facts giving rise thereto are specifically set out, and if it is made to appear that at the time of entering into the contract, the defendant had knowledge or notice of such facts, and that the special injury subsequently sustained was within the contemplation of the parties."
>
> *Huyler's* v. *Ritz-Carlton Restaurant & Hotel Co.*, 9 F. 2d 148, 149.

That the Corporation suffered special damages is pleaded.

(a) That the Corporation lost the profits of its going business, $301,690.91, by reason of Respondent's breach is alleged and this is a direct result of the Government depriving the Corporation of its working capital sufficient to continue conducting its going profitable business.

> "This Court long has recognized the right to recover damages for the loss of anticipated profits when

they result from a breach of contract and when there is a sufficient basis for estimating them with reasonable certainty."

United States v. *Penn Foundry & Mfg. Co.*, 337 U.S. 198, 208; 93 L. ed. 1308, 1316.
See also *Wellington* v. *Spencer*, 37 Okla. 461; 132 P. 675, 677.
Quist v. *Zerr*, 12 Wash. 2d 21; 120 P. 2d 539.
Natural Soda Products Co. v. *City of Los Angeles*, 23 Calif. 2d 193, 143 P. 2d 12.

(b) The Corporation had to abandon its $103,654.60 invested in the refrigeration development because of the Respondent's breach of the contracts is alleged and therefore lost that amount by reason of Respondent's breaches of the contracts.

(c) That the Corporation was required to spend $8,636.55 for the care, storage and removal of such machinery as should have been taken over by the Government was alleged and the Corporation's expense in that particular was a damage which the Corporation suffered by reason of the Respondent's breaches.

(d) That the Corporation was required to expend $2,500.00 to reactivate its machinery because it was deprived of the funds with which to continue to pay for its continued activation by the Respondent's breaches of said contracts is pleaded and that the Respondent had sufficient knowledge of such facts to make the Respondent liable for such damage.

(e) That the Corporation was compelled to file under Chapter X of the Bankruptcy Act by reason of Respondent's breaches was so pleaded that it is clear that the Corporation suffered the damage of paying the costs of such proceedings.

(f) That the Corporation was compelled to undertake an expensive appeal to the Armed Services Board of Contract

Appeals was so pleaded that it was clear that such expenses were damages caused by Respondent's breaches of said contracts and were recoverable from the Respondent therefor.

(g) That the Corporation was required to pay interest to the Bank on the money which the Corporation was required to borrow in order to complete the contracts from the time that said money should have reasonably been paid to the Corporation to the time it actually was paid, in the sum of $22,106.20, was reasonably pleaded so that the Corporation had a right to claim that sum for damages because of the Respondent's breaches of said contracts. This point is particularly well taken at the present time because although Section 28 USCA 2516 previously had said that: "*No* interest shall be allowed on *any* claim up to the time of the rendition of the judgment * * *", this statute was amended on June 25, 1948, to read: "Interest on a claim against the United States shall be allowed in a judgment of the Court of Claims only under contract or Act of Congress specifically providing for payment thereof." It does not say that no interest shall be allowed which was required to be paid other corporations than the United States but no interest shall be allowed on a claim against the United States. There must have been some reason for amending this statute, although there is no showing in the Congressional Record as to the reason. It must be inferred that since the statute does not read that no interest shall be allowed on *any* claim but only that interest "on a claim against the United States," this is not interest on a claim against the United States but interest on a claim by the Bank against the corporation which caused the corporation that much damage and is, therefore, recoverable.

Conclusion

For the reasons above stated, it is respectfully submitted that a Writ of Certiorari should issue to the United States Court of Claims and that the judgment of said Court refusing the Petitioners the right to file its Substituted and Amended Petition should be reviewed by this Court.*

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* Note: It is to be noted there is a mistake on page 12 of the printed Substituted and Amended Petition, wherein immediately following Paragraph 16 there is Number 17. This should have been merely a paragraph of Number 16 and what is second numbered Paragraph 17 (on page 16) is correct.